

Foreign-Trade Zones Board, Commerce

§ 400.22

(l) Determine whether applications meet prefiling requirements under § 400.27(b);

(m) Direct processing of applications, including designation of examiners and scheduling of hearings under §§ 400.27 and 400.32;

(n) Authorize minor modifications to zone projects under § 400.27(f);

(o) Review changes in sourcing under § 400.28(a)(3);

(p) Direct monitoring of zone activity under § 400.31(d);

(q) Direct reviews and make recommendations on requests for manufacturing/processing approvals under § 400.32(b);

(r) Determine questions of scope under § 400.32(c);

(s) Accept rate schedules and determine their sufficiency under § 400.42(b)(3);

(t) Review and decide zone rate complaints cases under § 400.42(b)(5);

(u) Make recommendations in cases involving questions as to whether zone activity should be prohibited or restricted for public interest reasons, including reviews under § 400.43;

(v) Authorize under certain circumstances the return of “zone-restricted merchandise” for entry into Customs territory under § 400.44;

(w) Authorize certain duty-paid retail trade under § 400.45;

(x) Determine the format for the annual reports of zone grantees to the Board and direct preparation of an annual report to Congress from the Board under § 400.46(d); and

(y) Designate an acting Executive Secretary.

§ 400.13 Board headquarters.

The headquarters of the Board is located within the U.S. Department of Commerce (Herbert C. Hoover Building), Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, as part of the office of the Foreign-Trade Zones staff.

Subpart C—Establishment and Modification of Zone Projects

§ 400.21 Number and location of zones and subzones.

(a) *Number of zone projects—port of entry entitlement.* (1) Provided that the

other requirements of this subpart are met:

(i) Each port of entry is entitled to at least one zone project;

(ii) If a port of entry is located in more than one state, each of the states in which the port of entry is located is entitled to a zone project; and

(iii) If a port of entry is defined to include more than one city separated by a navigable waterway, each of the cities is entitled to a zone project.

(2) Zone projects in addition to those approved under the entitlement provision of paragraph (a)(1) of this section may be authorized by the Board if it determines that existing project(s) will not adequately serve the public interest (convenience of commerce).

(b) *Location of zones and subzones—port of entry adjacency requirements.* (1) The Act provides that the Board may approve “zones in or adjacent to ports of entry” (19 U.S.C. 81b).

(2) The “adjacency” requirement is satisfied if:

(i) A general-purpose zone is located within 60 statute miles or 90 minutes’ driving time from the outer limits of a port of entry;

(ii) A subzone meets the following requirements relating to Customs supervision:

(A) Proper Customs oversight can be accomplished with physical and electronic means; and

(B) All electronically produced records are maintained in a format compatible with the requirements of the U.S. Customs Service for the duration of the record period; and

(C) The grantee/operator agrees to present merchandise for examination at a Customs site selected by Customs when requested, and further agrees to present all necessary documents directly to the Customs oversight office.

§ 400.22 Eligible applicants.

(a) *In general.* Subject to the other provisions of this section, public or private corporations may apply for a grant of authority to establish a zone project. The board will give preference to public corporations.

(b) *Public and non-profit corporations.* The eligibility of public and non-profit

corporations to apply for a grant of authority shall be supported by a enabling legislation of the legislature of the state in which the zone is to be located, indicating that the corporation, individually or as part of a class, is authorized to so apply.

(c) *Private for-profit corporations.* The eligibility of private for-profit corporations to apply for a grant of authority shall be supported by a special act of the state legislature naming the applicant corporation and by evidence indicating that the corporation is chartered for the purpose of establishing a zone.

(d) *Applicants for subzones—(1) Eligibility.* The following entities are eligible to apply for a grant of authority to establish a subzone:

- (i) The zone grantee of the closest zone project in the same state;
- (ii) The zone grantee of another zone in the same state, which is a public corporation, if the Board, or the Executive Secretary, finds that such sponsorship better serves the public interest; or
- (iii) A state agency specifically authorized to submit such an application by an act of the state legislature.

(2) *Complaints.* If an application is submitted under paragraph (d)(1) (ii) or (iii) of this section, the Executive Secretary will:

- (i) Notify, in writing, the grantee specified in paragraph (d)(1)(i) of this section, who may, within 30 days, object to such sponsorship, in writing, with supporting information as to why the public interest would be better served by its acting as sponsor;
- (ii) Review such objections prior to filing the application to determine whether the proposed sponsorship is in the public interest, taking into account:
 - (A) The complaining zone's structure and operation;
 - (B) The views of State and local public agencies; and
 - (C) The views of the proposed subzone operator;
- (iii) Notify the applicant and complainants in writing of the Executive Secretary's determination;
- (iv) If the Executive Secretary determines that the proposed sponsorship is in the public interest, file the applica-

tion (see § 400.47 regarding appeals to decisions of the Executive Secretary).

§ 400.23 Criteria for grants of authority for zones and subzones.

(a) *Zones.* The Board will consider the following factors in determining whether to issue a grant of authority for a zone project:

- (1) The need for zone services in the port of entry area, taking into account existing as well as projected international trade related activities and employment impact;
- (2) The adequacy of the operational and financial plans and the suitability of the proposed sites and facilities, with justification for duplicative sites;
- (3) The extent of state and local government support, as indicated by the compatibility of the zone project with the community's master plan or stated goals for economic development and the views of State and local public officials involved in economic development. Such officials shall avoid commitments that anticipate outcome of Board decisions;
- (4) The views of persons and firms likely to be affected by proposed zone activity; and
- (5) If the proposal involves manufacturing or processing activity, the criteria in § 400.31.

(b) *Subzones.* In reviewing proposals for subzones the Board will also consider:

- (1) Whether the operation could be located in or otherwise accommodated by the multi-purpose facilities of the zone project serving the area;
- (2) The specific zone benefits sought and the significant public benefit(s) involved supported by evidence to meet the requirement in § 400.31(c); and
- (3) Whether the proposed activity is in the public interest, taking into account the criteria in § 400.31.

§ 400.24 Application for zone.

(a) *In general.* An application for a grant of authority to establish a zone project shall consist of a transmittal letter, an executive summary and five exhibits.

(b) *Letter of transmittal.* The transmittal letter shall be currently dated and signed by an authorized officer of the